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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VICENTE FLORES,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 17-0112-RAO

**MEMORANDUM OPINION AND
ORDER**

Plaintiff Vicente Flores (“Plaintiff”) challenges the Commissioner’s denial of his application for disability insurance benefits (“DIB”). Plaintiff raises one claim in his challenge -- that the ALJ erred by not articulating clear and convincing reasons for discounting his subjective symptoms. After examining the ALJ’s decision addressing Plaintiff’s symptoms, the Court cannot discern on what ground(s) the ALJ discounted Plaintiff’s symptom testimony and thus reversal of the Commissioner’s decision is warranted. For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

1 **1. The ALJ Erred in Discounting Plaintiff's Testimony Regarding her**
2 **Subjective Symptoms**

3 The Court's review of the ALJ's decision discussing Plaintiff's subjective
4 symptom testimony shows the following.

5 In evaluating Plaintiff's symptoms, the ALJ began by reciting the relevant
6 and familiar two-step analysis that an ALJ undertakes in assessing a claimant's
7 testimony regarding subjective pain or the intensity of symptoms: (1) the ALJ must
8 determine whether there is an underlying impairment which could reasonably be
9 expected to produce the pain or other symptoms alleged; and (2) if so, the ALJ must
10 "evaluate the intensity, persistence, and limiting effects of [Plaintiff's] symptoms to
11 determine the extent to which they limit [Plaintiff's] functioning." AR 32; *see also*
12 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (In
13 assessing the credibility of a claimant's symptom testimony, "[f]irst, the ALJ must
14 determine whether the claimant has presented objective medical evidence of an
15 underlying impairment which could reasonably be expected to produce the pain or
16 other symptoms alleged;" if so, and if the ALJ does not find evidence of
17 malingering, the ALJ must provide "specific, clear and convincing reasons for
18 rejecting a claimant's testimony regarding the severity of the claimant's
19 symptoms").

20 After reciting this two-step analysis, the ALJ summarized some, but notably
21 not all, of Plaintiff's symptom testimony. AR 32-33. As Plaintiff highlights, the
22 ALJ did not include in his summary a description of Plaintiff's fatigue symptoms or
23 his need for naps. Joint Stipulation ("JS") at 7. After summarizing Plaintiff's
24 symptoms, the ALJ next discussed the medical assessments and reports of the
25 medical expert and the consultative examiner. AR 34. Then, in a conclusory
26 fashion, the ALJ stated, "Altogether, the weight of the medical opinion, as well as
27 the subjective complaints from [Plaintiff] and his wife, are credited to the extent
28 that [Plaintiff] is found to have had a residual functional capacity" consistent with

1 the residual functional capacity assessed by the ALJ in his decision. AR 34.

2 It is well settled that in assessing the credibility of a claimant's symptom
3 testimony, the ALJ must identify what testimony was found not credible and
4 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d
5 1195, 1208 (9th Cir. 2001). "General findings are insufficient." *Lester v. Chater*,
6 81 F.3d 821, 834 (9th Cir. 1995).

7 On this record, the Court cannot determine on what ground(s) the ALJ
8 discounted Plaintiff's subjective symptom testimony. Because no malingering
9 allegation was made, the ALJ's reasons must be "clear and convincing." *Treichler*,
10 775 F.3d at 1102. The Commissioner makes several arguments in support of the
11 ALJ's findings. But as Plaintiff correctly points out, the ALJ never articulated
12 these reasons, and this Court cannot affirm on grounds on which the ALJ did not
13 rely. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

14 The Court concludes that the ALJ did not give clear and convincing reasons,
15 supported by substantial evidence, for discounting Plaintiff's subjective symptom
16 testimony. Accordingly, remand is warranted on this issue.

17 **2. Remand for Further Administrative Proceedings**

18 Because further administrative review could remedy the ALJ's errors,
19 remand for further administrative proceedings, rather than an award of benefits, is
20 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
21 (remanding for an award of benefits is appropriate in rare circumstances). Before
22 ordering remand for an award of benefits, three requirements must be met: (1) the
23 Court must conclude that the ALJ failed to provide legally sufficient reasons for
24 rejecting evidence; (2) the Court must conclude that the record has been fully
25 developed and further administrative proceedings would serve no useful purpose;
26 and (3) the Court must conclude that if the improperly discredited evidence were
27 credited as true, the ALJ would be required to find the claimant disabled on
28 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court

1 retains flexibility to remand for further proceedings “when the record as a whole
2 creates serious doubt as to whether the claimant is, in fact, disabled within the
3 meaning of the Social Security Act.” *Id.* (citation omitted).

4 Here, remand for further administrative proceedings is appropriate. The
5 Court finds that the ALJ failed to provide clear and convincing reasons supported
6 by substantial evidence to discount Plaintiff’s subjective symptom testimony.

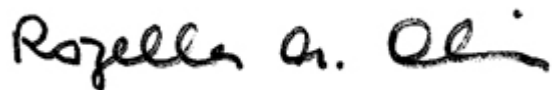
7 On remand, the ALJ shall reassess Plaintiff’s subjective allegations in light of
8 SSR 16-3p – Evaluation of Symptoms in Disability Claims, *available at* 2016 WL
9 1119029 (Mar. 16, 2016), which would apply upon remand. The ALJ shall then
10 reassess Plaintiff’s residual functional capacity in light of the reassessment of
11 Plaintiff’s subjective allegations and proceed through steps four and five to
12 determine what work, if any, Plaintiff is capable of performing.

13 **3. Conclusion**

14 IT IS ORDERED that Judgment shall be entered REVERSING the decision
15 of the Commissioner denying benefits, and REMANDING the matter for further
16 proceedings consistent with this Order.

17 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
18 Order and the Judgment on counsel for both parties.

19
20 DATED: November 30, 2017



21 ROZELLA A. OLIVER
22 UNITED STATES MAGISTRATE JUDGE
23

24 **NOTICE**

25 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
26 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**
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